

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4357 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

JETHABHAI S PATEL

Versus

STATE OF GUJARAT

Appearance:

MR AJ PATEL for Petitioner
MS JOSHI AGP for Respondent No. 1
NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 15/12/2000

ORAL JUDGEMENT

In this petition filed under Article 227 of the
Constitution, the petitioner challenges the order dated
January 31, 1989 [Annexure-E] passed in Revision

Application No. TEN.BA.492/87 by the Gujarat Revenue Tribunal, Ahmedabad by which, the order dated May 7, 1987 [Annexure-D] made by Deputy Collector, Land Reforms [Appeals], Ahmedabad in Tenancy Appeal No. 106 of 1984 came to be confirmed. The Deputy Collector, Land Reforms [Appeals], by his order dated May 7, 1987 has affirmed the order dated November 30, 1983 [Annexure-C] passed by the Mamlatdar & ALT, Dehgam in Tenancy case No. 69 of 1979. The Mamlatdar & ALT, Dehgam by his order dated November 30, 1983 has declared sale of the land in question, in favour of the petitioner, as illegal as it was made in contravention of the provision of section 84C of the Bombay Tenancy & Agricultural Lands Act, 1948 [‘the Act’ for short] and further ordered to hand over possession of the land in question to the original owner.

2. According to the petitioner, he was and is an agriculturist in village Kadotar, Taluka-Palanpur, District Banaskantha, in the year 1981. That, he possesses land bearing Survey No. 161 admeasuring 2 Acres 25 Gunthas in the said village and cultivates the same personally. It is the say of the petitioner that since the cultivation of the land in Banaskantha District did not yield sufficient income for the purpose of maintaining his family, he was driven to the necessity of going to Dehgam where he worked as a farm labourer but, that was also not enough for the proper maintenance of his family, and as a result thereof, the petitioner purchased lands bearing Survey Nos. 174/1, 174/2, 182 and 188 of village Dehgam under a registered Sale Deed dated March 13, 1981. The said land was got registered in the revenue records vide mutation entry no. 4622 dated April 7, 1981. The petitioner thereafter started cultivating the said land.

3. However, the Mamlatdar & ALT Dehgam suo-motu initiated proceedings under section 84-C of the Act on the ground that petitioner cannot be said to be an agriculturists within the meaning of the Act. In the said proceedings being Tenancy Case No. 60/79, the petitioner inter alia contended that (i) he was a farm labourer, therefore, his case would fall within the definition of Section 63 of the Act; (ii) he had lands in Banaskantha district which he was cultivating before his migration to Dehgam; and (iii) he was carrying on agricultural operations legitimately for the purpose of maintaining his family.

3.1 However, the Mamlatdar & ATL, Dehgam by his judgment and order dated November 30, 1983 held that the transaction in question was in contravention of the

provisions of section 84C of the Act, and therefore, ordered handing over of the possession of land to its original owner.

3.2 Feeling aggrieved and dissatisfied with the said order, the petitioner preferred Tenancy Appeal No. 106 of 1984 before the Deputy Collector, Land Reforms [Appeals], Ahmedabad. Deputy Collector, by his judgement and order dated May 7, 1987 dismissed the said appeal.

3.3 Aggrieved with the said order of Deputy Collector, Ahmedabad, the petitioner preferred Revision Application No. TEN.B.A 492 of 1987 before the Gujarat Revenue Tribunal, which too came to be disallowed vide judgment and order dated January 31, 1989 giving rise to the present writ petition.

4. The petition is contested by the respondent no. 1 by filing reply affidavit. Mr. P.M Soni, Mamlatdar & ALT, Dehgam has denied the averments made in the petition. It is further contended that therein that the sale in favour of the petitioner by the respondent no. 2 for consideration of Rs. 48, 999/= by way of registered sale deed dated August 13, 1981, is a void transaction and against the provisions of the Act, and therefore, the show cause notice was issued to the petitioner as well as respondent no. 2 on October 27, 1983. It is further asserted that the petitioner was not holding any land at Dehgam prior to purchase of the suit land inasmuch as the petitioner has not taken any permission from the authority before purchasing the suit land from the respondent no. 2. Lastly, it is claimed that the authorities below had concurrently held against the petitioner, therefore, it is not open for the petitioner to contend his case in a petition under Art. 227 of the Constitution. On the aforesaid premises, it is prayed to dismiss the petition as it is devoid of merits and substance.

5. Mr. A.J Patel, learned counsel appearing for the petitioner contended that the proceedings in the instant case have been initiated after 2 years and six months. According to the learned counsel, it is true that there is no time limit prescribed for exercising powers under Section 84C of the Act, however, such powers are required to be exercised within a reasonable period. Therefore, the proceedings initiated after elapse of two years and six months cannot be said to have been exercised within a reasonable time, requiring the same to be quashed and set aside. What was stressed by the learned counsel was that though the land purchased by the petitioner being

not within the radius of 8 kms of the present holding, however, there is ample evidence to show that the petitioner was possessing land at his native place in Banaskantha district. Therefore, according to learned counsel, by virtue of Section 4 of the Bombay Tenancy & Agricultural Lands [Gujarat Amendment] Amending Ordinance, 2000 [Gujarat Ordinance No. 5 of 2000], the proceedings initiated in the instant case stands abated. It was emphatically submitted by the learned counsel that the petitioner was and is an agricultural labourer at Dehgam and in view of this section 63 of the Act, if the person works as an agricultural labourer, there is no contravention of provision of section 84C of the Act. On the aforesaid premises, he prayed to allow this petition by quashing and setting aside the impugned order made by the Mamlatdar & ATL, Dehgam, duly confirmed in appeal by Deputy Collector, Land Reforms [Appeals], Ahmedabad and affirmed in revision application, by the Gujarat Revenue Tribunal, Ahmedabad.

6. Ms. Joshi, learned AGP has contested the matter on the grounds, inter alia, that there is no time limit prescribed under the Statute in respect of exercising of powers under section 63 of the Act; the petitioner has failed to produce any cogent evidence showing that during the said span of two years and six months, he had invested huge amount towards improvement and development of the lands, resulting into loss or damages; there is no evidence to show that petitioner was cultivating the lands as an agriculturist either at Dehgam or was holding land at Banaskantha prior to transferring the same to his brother, and therefore, provision of section 4 of the Bombay Tenancy & Agricultural Lands [Gujarat Amendment] Amending Ordinance, 2000 [Gujarat Ordinance No.5 of 2000] cannot be made applicable and no benefit of the said provision can be extended to the petitioner. Ms. Joshi further submitted that the certificate issued by the Nagar Palika showing that the petitioner was an agricultural labourer cannot be considered on its face value as the Nagarpalika is not the competent authority, nor any weightage can be given to the certificate issued by a private agriculturist certifying petitioner to be agricultural labourer. She, therefore, urged that there is not merit in the petition and the same is required to be rejected.

7. I have considered the submission made by the respective parties and documents forming part of the petition. It is true that proceedings in the instant case were initiated after two years and six months after the land in question was purchased by the petitioner in

the year 1981. It is also true that there is no time limit prescribed for exercising power under the statute, however, there is no manner of doubt that it should be exercised within a reasonable time. The Apex Court in Mohamad Kavi Mohamad Amin v. Fatmabai Ibrahim, (1997) 6 SCC 71 has held that when no time is prescribed for exercise of power under a statute, such power has to be exercised within a reasonable time. In the said case, the proceedings were initiated after four years. The Supreme Court has observed that, 'the transfer proceedings took place as early as in the year 1972 and suo motu enquiry was started by the Mamlatdar in September, 1976. If sale deeds are declared to be invalid, the appellant is likely to suffer irreparable injury, because he has made investments after the aforesaid purchase.' In this context, the Apex Court has relied upon the judgment delivered by this Court in State of Gujarat v. Jethmal Bhagwandas Shah [Special Civil Application No. 2770 1979 : decided on March 1, 1990] which was in connection with section 84C of the Act. In the said judgment, the Supreme Court has also relied upon judgment in the case of State of Gujarat v. Patil Raghav Natha, (1969) 2 SCC 187 and in the case of Ram Chand v. Union of India, (1994) 1 SCC 44. In the said judgment, it was observed that, 'where no time-limit is prescribed for exercise of a power under a statute, it does not mean that it can be exercised at any time; such power has to be exercised within a reasonable time.'

8. Applying the principles laid down by the Hon'ble Supreme Court, so far as the case on hand is concerned, it is an admitted position that the proceedings in the instant case came to be initiated after two years and six months, and therefore, it can reasonably be presumed that the petitioner must have invested huge amount over the improvement and development of land during the intervening period, and therefore, if the sale deed is declared to be invalid, the petitioner is likely to suffer irreparable.

9. Thus, on over all view of the matter, I am fully satisfied that the proceedings initiated after two years and six months is required to be quashed and set-aside and on this ground alone, petition is required to be allowed. Therefore, I do not consider it fit to examine the other averments advanced by the learned counsel for the petitioner.

10. For the foregoing reasons, the present petition succeeds and is accordingly allowed. The impugned orders Annexure-C,D & E respectively made by the Mamlatdar &

ATL, Dehgam confirmed in Tenancy Appeal by the Deputy Collector and affirmed by the Gujarat Revenue Tribunal, Ahmedabad, are quashed and set-aside. Rule is made absolute. Interim relief granted earlier stands vacated. There shall be no order as to costs.

[A.M Kapadia, J.]

Prakash*